THE MOORE LIME CO. v. RICHARDSON'S ADM'R.—Decided at Richmond, November 18, 1897.—*Buchanan*, J:

1. MASTER AND SERVANT—*Fellow-servants—Foreman of gang.* The foreman of a gang of hands engaged in moving cars on a siding, who is a member of the gang, doing the same work and receiving the same pay as other members of the gang, is a fellow-servant of other members of the gang, although he exercises authority over them, and directs them while engaged in their common work, and it is their duty to obey him. This kind of superiority does not make him a vice-principal.

2. MASTER AND SERVANT—*Fellow-servants—Foreman—Negligence—Failure to give warning.* The failure of the foreman and fellow-servant of a gang of hands engaged in moving cars on a siding to give warning of the approach from behind of a car by which a member of the gang is injured, is not negligence for which the master is liable, although it had been customary for the foreman to give such warning under like circumstances.

3. MASTER AND SERVANT—*Servant's knowledge of danger—Special warning.* A servant who has been engaged for a number of years in the work of the master, and who has full knowledge of its dangers, is not entitled, while engaged in his usual employment, to special warning of dangers reasonably to be apprehended.

4. MASTER AND SERVANT—*What risks servant assumes.* A servant engaging in the service of master does not assume *all the risks* incident to his employment, but only such as are *ordinarily* incident thereto.

5. MASTER AND SERVANT—*Promulgation of rules—Complex business—Case at bar.* It is the duty of a master who is engaged in a complex business which requires definite rules for the protection and safety of his servants, to adopt rules for that purpose, and a failure to do so is such negligence as renders him responsible for all injuries resulting therefrom. In the case at bar, the work was neither complex nor difficult. The occasional moving of cars by hand on a railroad siding is not a work of such nature as to require the promulgation of rules for the government of servants engaged in such moving.

YANCEY, TRUSTEE, AND ANOTHER v. BLAKEMORE AND OTHERS.—Decided at Richmond, November 18, 1897.—*Harrison*, J. Absent, *Riely* and *Cardwell*, JJ:

VENDOR'S LIEN—*Subsequent alienations of parcels—Order of liability—Notice.* A part of a tract of land subject to a vendor's lien is sold and conveyed by the original vendee to a sub-vendee, no lien being retained for the purchase price, though it was verbally agreed that there should be. The sub-vendee executes his bond to his immediate vendor who assigns it to the original vendor to whom the sub-vendee verbally agrees to pay it in discharge of the balance of the purchase money due by the original vendee. Subsequently the sub-vendee places a mortgage on the land so purchased by him, and discloses the fact to the mortgagee that he is indebted to the original vendor, but does not disclose the origin of the indebtedness, or that it is in anywise a lien on the land, or that it has been agreed that a lien should be retained for the debt.

Held: The land retained by the original vendee is first liable for the balance of the vendor's lien. The mortgagee is not bound to inquire for evidence of secret equities between the other parties, and the recordation of the vendor's lien did not impose this duty upon him.

BARLEY AND OTHERS v. BYRD AND OTHERS.—Decided at Richmond, November 18, 1897.—*Keith*, P:

1. SUIT TO ESTABLISH LOST DEED—*Evidence—Memorandum in handwriting of grantee's attorney.* In a suit to set up a lost deed made a century ago, a memorandum in the handwriting of the grantee's attorney, found amongst the papers of the grantee, stating that the lands had been granted to the grantor, and by him and wife conveyed with general warranty to the grantee, is not in itself evidence of the execution of such deed; nor is such memorandum admissible as a declaration against interest in a suit where no relief is sought against the attorney, or his representatives; nor is it admissible as a part of the *res gestae*, as the transaction to be explained or proved is the execution of the deed, and the memorandum neither accompanies nor explains the fact in issue.

2. EVIDENCE—*Deed not properly authenticated or recorded—Copy of a copy.* Where an original deed conveying lands lying wholly in Virginia is admitted to record outside of the State, upon proof and authentication wholly insufficient to have admitted it to record in Virginia, and a copy thereof is subsequently admitted to record in a county in Virginia where a part of the lands conveyed lie, and the absence of the original deed is not accounted for, a copy from the copy so admitted to record is not admissible in evidence to prove the recitals in said deed.

3. SUIT TO ESTABLISH LOST DEED—*To whom land charged for taxes—Copies from Auditor's Office—Intermediate conveyance unaccompanied by possession—Case at bar.* In a suit to establish a deed alleged to have been made a century ago, and lost, neither the certificate of the Auditor showing that the lands were charged to the grantee for a great number of years after the date of the alleged deed, nor any number of intermediate conveyances, however numerous, from those claiming under the alleged grantee, unaccompanied by possession or other circumstance, can serve to establish the execution of such deed. In the case at bar the evidence of possession in appellants amounts to nothing, so far as it affects the rights of other parties to the controversy.

4. SUIT TO ESTABLISH LOST DEED—*Proof of former existence.* Courts of equity, in exercising their jurisdiction to set up of lost instrument which is to constitute a muniment of title, require strong and conclusive proof of its former existence, its loss, and its contents.

WALKER & OTHERS v. WEBSTER & OTHERS.—Decided at Richmond, December, 2, 1897.—*Riely*, J. *Keith*, P., dissents:

1. WILLS—*Construction—Case at bar—Per stirpes or per capita.* A will contains the following residuary clause, "All the rest and residue of my estate, real, personal, and mixed, I desire shall go to and be divided in equal parts among those who would be my heirs at law under the statute of descents and distributions in Virginia in case I had died intestate."

Held: The heirs take *per capita*, and not *per stirpes.*